

### **REMARKS**

The Office Action mailed May 23, 2005 has been reviewed and carefully considered. Reconsideration of the above-identified application, as herein amended and in view of the following remarks, is respectfully requested.

Claims 1-12, 14-32 and 34-45 are pending in this application. Claims 13 and 33 have been cancelled without prejudice. Claims 1, 20 and 25 have been amended. New claim 45 has been added. No new matter has been added by the amendments.

### **§112 REJECTION**

Claim 20 was rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. Applicant has amended claim 20 to depend from claim 17, which provides proper antecedent basis for the “said providing step.” Accordingly, withdrawal of the rejection is respectfully requested.

### **§102 REJECTIONS**

Claims 1, 6-8, 14-17, 24-25, 28-29, 34-37 and 44 stand rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 5,898,668 to Shaffer (hereinafter “Shaffer”). Applicant respectfully disagrees with the rejection.

In the Office Action, the Examiner alleges that Shaffer teaches all the elements of claims 1 and 25, including “receiving a first selection from a user specifying a cost of service threshold for the download process.” However, after careful review of Shaffer, the Applicant disagrees. Shaffer’s system and method is geared towards managing the routing

of communications data between different communication modes (e.g., Internet, LAN, ATM, etc.) that are available to implement a communication session. Firstly, Shaffer is focused on implementing communications sessions which comprise **real-time** multimedia communications (i.e., a telecommunications conference). Shaffer fails to mention a user specifying a content to be downloaded to a network device during a download process, essentially as claimed in claims 1 and 25. The present invention clearly defines such content as comprising, e.g., e-mail, stock quotes, sports scores, movies, audio files, etc.

Implementing a real-time teleconference as in Shaffer is wholly unrelated to downloading the presently claimed content, which in the present invention, can be done at any time when the cost of service is less than a cost of service threshold, even if the user is NOT present. *See* specification, e.g., page 14, lines 1-3; page 17, lines 6-17.

Further, for establishing telecommunication conferences, quality of service is often critical in order to facilitate effective communication and depends on the selection of the communication mode and network traffic. *See* Shaffer, Col. 2, lines 26-29. Thus, Shaffer is focused on selecting a communication mode from an assortment of communication modes which provides a highest quality of service at or below an acceptable session tariff. In contrast, the present invention is a much more flexible and opportunistic approach that can perform the user-requested downloads regardless of quality of service and does not require any selection from amongst different communication nodes. Simply, in one embodiment of the present invention, the downloads are performed at any and all times when the cost of service is less than the cost of service threshold, irrespective of quality of service considerations.

Nevertheless, Applicant has amended claims 1 and 25 to substantially include the limitations of claims 13 and 33, respectively. Thus, claims 1 and 25 now include, *inter alia*, "...wherein said performing step comprises the steps of: stopping the download process, when the cost of service rises above the cost of service threshold; and resuming the download process, when the cost of service falls below the cost of service threshold." This added limitation is not disclosed or suggested by Shaffer, as acknowledged by the Examiner on page 7, paragraph (30) of the Office Action of May 23, 2005.

### **§103 REJECTIONS**

Applicant notes that claims 13 and 33 were rejected under 35 U.S.C. §103(a) as being unpatentable over Shaffer as applied to claims 1 and 25 above, and further in view of U.S. Patent No. 5,961,602 to Thompson et al. (hereinafter Thompson). Applicant respectfully disagrees with the rejection.

Thompson involves a method for optimizing the retrieval of Web content during a limited period of time. *See* Col. 2, lines 2-8. This concept of "optimizing retrieval" in Thompson simply refers to maximizing the downloading of as many sites as possible during a given limited period of time. For example, such time period is restricted to (1) hour per night. *See* Col. 8, lines 16-17. In Thompson, as content is being downloaded to the cache during the allotted amount of time, a determination is made of an activity level for the communication link. The activity level is determined by a link activity monitor 229 which determines the extent to which the communication link is being utilized at a given point in time. *See* Col. 7, lines 31-33.

Thompson's concept of "optimizing retrieval" bears NO relation, however, to the present invention's ability to download content at ANY time when the cost of service is less than the cost of service threshold, as essentially claimed in claims 1 and 25. That is, Thompson makes no mention of a download process being contingent or in any way related to a cost of service being less than a user-specified cost of service threshold. Instead, Thompson is merely concerned with using a given modem to its maximum capacity during the (1) hour or so allotted for caching Web data. *See* Abstract; Col. 8, lines 48-50

The Examiner refers to FIG. 5 and alleges that Thompson "teaches a method ... of optimizing data downloads through cost of service tracking ... by delaying downloads ... during peak time periods ..." However, after careful examination of Thompson (in particular FIG. 5), a clarification of Thompson's teaching is as follows:

a) During a download of content, a determination of the activity level of the communication link is made (step 254). Specifically, step 254 determines how much "bandwidth" is being used since a last cycle by receiving information from the link activity monitor 229.

b) While the content is still downloading, it is tested whether the measured link activity of step 254 meets some peak usage criteria. The peak usage criteria (defined in Col. 8, lines 48-65) is basically the maximum capacity of the modem.

c) As long as the link activity meets the peak usage criteria, then the modem 222 is being used to its maximum capacity, and the process proceeds to step 256 "which is indicated as a delay." *See* Col. 9, lines 1-5. What this "delay" step means, is that current downloading process proceeds (for as long as the allotted time period runs) but no *new* content is obtained for downloading. In other words, the existing

download process is NOT stopped but permitted to continue; only **additional** downloads are curtailed (delayed), since the existing download throughput has been determined to be at maximum capacity. *See* Col. 9, lines 1-10.

Clearly, Thompson fails to disclose or suggest wherein a download process is **stopped** completely when the cost of service rises above the cost of service threshold, essentially as claimed in claims 1 and 25. Instead, as discussed above, Thompson *continues* downloading content, and any “delay” simply involves delaying the issuance of any **additional** content for downloading. Moreover, the “peak usage criteria” of Thompson is completely unrelated to the cost of service threshold of the present invention.

Since Thompson’s focus is on **maximizing** download throughput to a download cache during a limited time period, it is clear that Thompson teaches away from any type of alleged “pause method” which would stop or even reduce the downloading process in any way. The only thing that stops the download process in Thompson is if the allotted time period has elapsed (*see* steps 250, 252 of FIG. 5). Otherwise, the downloading process is, of course, maintained and continued at maximum capacity throughout the allotted time period.

Thus, even assuming *arguendo*, that Thompson could be properly combined with Shaffer, there is no motivation or inclination to modify Thompson to teach stopping the download process when the cost of service rises above the cost of service threshold, as essentially claimed in amended claims 1 and 25 of the present invention (amended to include the limitations of claims 13 and 33, respectively).

Accordingly, claims 1 and 25 are asserted to be patentable and nonobvious over Shaffer in view of Thompson for at least the reasons stated above. Claims 13 and 33 have

now been cancelled. Claims 6-8, 14-17 and 24 depend from claim 1; claims 28-29, 34-37 and 44 depend from claim 25. The dependent claims include the limitations of their respective independent claims and are therefore believed to be patentable and nonobvious for at least the reasons stated for claims 1 and 25.

Claims 2 and 26 were rejected under 35 U.S.C. §103(a) as being unpatentable over Shaffer as applied to claims 1 and 25, above, and further in view of U.S. Patent No. 6,876,627 to Rao. Claims 3-5 and 27 were rejected under 35 U.S.C. §103(a) as being unpatentable over Shaffer as applied to claims 1 and 25 above, and further in view of U.S. Patent No. 6,683,853 to Kannas et al. Claims 9-12 and 30-32 were rejected under 35 U.S.C. §103(a) as being unpatentable over Shaffer as applied to claims 1 and 25 above, and further in view of U.S. Patent No. 6,748,222 to Hashem et al. Claims 18, 20, 38 and 40 were rejected under 35 U.S.C. §103(a) as being unpatentable over Shaffer as applied to claims 1, 14, 17, 25 and 37 above, and further in view of U.S. Patent No. 6,854,012 to Taylor. Claims 19 and 39 were rejected under 35 U.S.C. §103(a) as being unpatentable over Shaffer as applied to claims 1, 17, 25 and 37 above and further in view of U.S. Patent No. 6,553,515 to Gross et al. Claims 21 and 41 were rejected under 35 U.S.C. §103(a) as being unpatentable over Shaffer as applied to claims 1 and 25 above, and further in view of U.S. Patent No. 5,701,294 to Ward et al. Claims 22, 23, 42 and 43 were rejected under 35 U.S.C. §103(a) as being unpatentable over Shaffer as applied to claims 1 and 25 above, and further in view of U.S. Patent No. 6,731,613 to Provance.

The rejection of dependent claims 2-5, 9-12, 18-23, 26-27, 30-32 and 38-43 is based, in part, on the Examiner's contention that Shaffer discloses or suggests the features of amended independent claims 1 and 25, from which claims 2-5, 9-12, 18-23,

26-27, 30-32 and 38-43 depend. Without addressing the merits of the rejections, however, it is clear that the combination of Shaffer with Rao, Kannas, Hashem, Taylor, Gross, Ward and/or Provance is legally deficient, since, at the very least, as explained above, Shaffer fails to disclose or suggest the features of amended claims 1 and 25, from which claims 2-5, 9-12, 18-23, 26-27, 30-32 and 38-43 depend.

It is therefore respectfully submitted that the present invention is not disclosed or suggested by the cited references taken alone or in combination. Claims 1 and 25 and their dependent claims 2-12, 14-24, 26-32 and 34-45 are believed to be in condition for allowance for at least the reasons stated above. Claims 13 and 33 have been cancelled without prejudice. Withdrawal of all the rejections and early and favorable reconsideration of the case is respectfully requested.

### CONCLUSION

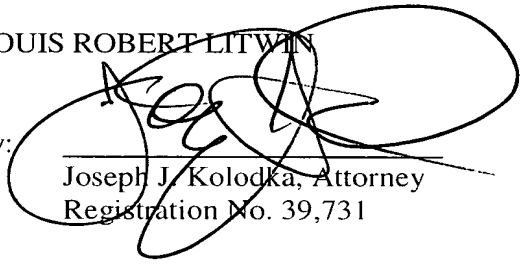
In view of the foregoing, Applicant respectfully requests that the rejections of the claims set forth in the Office Action of May 23, 2005 be withdrawn, that pending Claims 1-12, 14-32 and 34-45 be allowed, and that the case proceed to early issuance of Letters Patent in due course.

It is believed that no additional fees or charges are currently due. However, in the event that any additional fees or charges are required at this time in connection with the application, they may be charged to applicant's representatives Deposit Account No. 07-0932.

Respectfully submitted,

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